MISCELLANY.

Rules of the United States Circuit Court of Appeals—Fourth Circuit.

1. Name.—The court adopts "United States Circuit Court of Appeals for the Fourth Circuit" as the title of the court.

2. Seal.—The seal shall contain the words "United States" on the upper part of the outer edge; and the words "Circuit Court of Appeals" on the lower part of the outer edge, running from left to right: and the words "Fourth Circuit" in two lines, in the centre, with a dash beneath.

3. Terms.—1. There shall be held in the city of Richmond, Virginia, three regular terms of this court; one on the first Tuesday of February, one on the first Tuesday of May, and one on the first Tuesday of November, in each year.

2. Special sessions of this court shall be held in Richmond, Virginia, on the second Tuesday of every month of the year, except in those months in which regular terms of the court are held. During said sessions such orders, judgments or decrees as may be necessary concerning pending cases may be considered and disposed of, opinions in cases theretofore argued may be filed and decrees and judgments relating thereto entered, mandates issued, and any such further action taken as is authorized by the statute in such case made and provided.

3. If at any such special session no judge shall be in attendance, the clerk shall adjourn the court until the next day, or to such time as the senior Circuit Judge shall direct, and then in case no direction be made, to the next session or term of the court.

4. Quorum.—1. If, at any term, a quorum does not attend on any day appointed for holding it, any judge who does attend may adjourn the court from time to time, or from place to place, or, in the absense of any judge, the clerk may adjourn the court from day to day. If, during a term, after a quorum has assembled, less than that number attend on any day, any judge attending may adjourn the court from day to day until there is a quorum, or may adjourn without day.

2. Any judge attending when less than a quorum is present may make all necessary orders touching any suit, proceeding, or process depending in or returned to the court, preparatory to hearing, trial, or decision thereof.

5. Clerk.—1. The clerk's office shall be kept at Richmond, Virginia.

2. The clerk shall not practice, either as attorney or counsellor, in this court or in any court while he shall continue to be clerk of this court.

3. He shall, before he enters on the execution of his office, take

an oath in the form prescribed by § 794 of the Revised Statutes, and shall give bond in a sum to be fixed, and with sureties to be approved, by the court, faithfully to discharge the duties of his office and seasonably to record the decrees, judgments, and determinations of the court. A copy of such bond shall be entered on the journal of the court, and the bond shall be deposited for safe-keeping as the court may direct.

4. He shall not permit any original record or paper to be taken from the court-room or from the office, without an order from the court.

6. Marshal, Crier, and Other Officers.—The marshal and crier shall be in attendance during the sessions of the court, with such number of bailiffs and messengers as the court may, from time to time, order.

7. Attorneys and Counsellors.—All attorneys and counsellors admitted to practice in the Supreme Court of the United States, or in any District Court of the United States, shall become attorneys and counsellors in this court on taking an oath or affirmation in the form prescribed by rule 2 of the Supreme Court of the United States, subscribing the roll, and paying to the clerk a fee of $5. The monies received by the clerk under this rule shall be accounted for to the court, and be expended under its direction for the purchase of law books for the court library.

8. Practice.—The practice shall be the same as in the Supreme Court of the United States, as far as the same shall be applicable.

9. Process.—All process of this court shall be in the name of the President of the United States, and shall be in like form and tested in the same manner as process of the Supreme Court.

10. Bill of Exceptions.—1. The judges of the district courts shall not allow any bill of exceptions which shall contain the charge of the court at large to the jury in trials at common law upon any general exception to the whole of such charge. But the party excepting shall be required to state distinctly the several matters of law in such charge to which he excepts; and those matters of law, and those only, shall be inserted in the bill of exceptions and allowed by the court.

2. Only so much of the evidence shall be embraced in a bill of exceptions as may be necessary to present clearly the questions of law involved in the rulings to which exceptions are reserved, and such evidence as is embraced therein shall be set forth in condensed and narrative form, save as a proper understanding of the questions presented may require that parts of it be set forth otherwise.

11. Assignment of Errors.—The plaintiff in error or appellant shall file with the clerk of the court below, with his petition for the writ of error or appeal, an assignment of errors, which shall set out sep-

arately and particularly each error asserted and intended to be urged. No writ of error or appeal shall be allowed until such assignment of errors shall have been filed. When the error alleged is to the admission or to the rejection of evidence, the assignment of errors shall quote the full substance of the evidence admitted or rejected. When the error alleged is to the charge of the court, the assignment of errors shall set out the part referred to totidem verbis, whether it be in instructions given or in instructions refused. Such assignment of errors shall form part of the transcript of the record and be printed with it. When this rule is not complied with, counsel will not be heard, except at the request of the court; and errors not assigned according to this rule will be disregarded, but the court, at its option, may notice a plain error not assigned.

12. Objections to Evidence in the Record.—In all cases of equity or admiralty jurisdiction, heard in this court, no objection shall be allowed to be taken to the admissibility of any deposition, deed, grant, exhibit or translation found in the record as evidence, unless objection was taken thereto in the court below and entered of record; but the same shall otherwise be deemed to have been admitted by consent.

13. Supersedeas and Cost Bonds.—1. Supersedeas bonds in the district courts must be taken, with good and sufficient security, that the plaintiff in error or appellant shall prosecute his writ or appeal to effect, and answer all damages and costs, if he fail to make his plea good. Such indemnity, where the judgment or decree is for the recovery of money not otherwise secured, must be for the whole amount of the judgment or decree, including just damages for delay, and costs and interest on the appeal; but in all suits where the property in controversy necessarily follows the suit, as in real actions and replevin, and in suits on mortgages, or where the property is in the custody of the marshal under admiralty process, or where the proceeds thereof, or a bond for the value thereof, is in custody of the court, indemnity in all such cases will be required only in an amount sufficient to secure the sum recovered for the use and detention of the property, and the cost of the suit and just damages for delay, and costs and interest on the appeal.

2. On all appeals under section 129 of the Judicial Code, the appellant shall at the time of the allowance of said appeal, if required by the judge of the court below, file with the clerk of such court a bond to the opposite party in such sum as such judge shall direct, for all costs and damages, or simply for all costs, as the said judge shall determine, if he shall fail to sustain his appeal.

14. Writs of Error, Appeals, Return, and Record.—1. The clerk of the court to which any writ of error may be directed shall (except

as otherwise provided by the rule 23) make return of the same, by certifying under his hand and the seal of said court, in accordance with the act of Congress of February 13, 1911 (36 Stat. at Large, 901), and transmitting to the clerk of this court one of the printed transcripts of the record provided for by said act. In all cases of appeal and also in all cases of petition for revision in bankruptcy said clerk shall likewise certify, seal and transmit a copy of the printed transcript of the record to the clerk of this court.

2. In every printed transcript of the record the order of the parts thereof shall substantially follow the order in which the same were filed, entered or made, and shall contain a copy of such opinion or opinions of the trial judge as may have been filed. It shall be suitably indexed, and where any deposition or report of evidence requires more than one printed page the name of the deponent or witness shall be printed at the top of each page. And the foregoing shall, so far as may be applicable, apply to the printed addenda to records hereinafter provided for.

3. Except in cases where counsel shall agree by written and signed stipulation—which shall be a part of the record—as to what portions of the record and proofs of the case in the court below, shall be printed in the transcript of the record for use in this court, the trial judge shall have the power, upon application after reasonable notice to the opposing party or his counsel, to determine what shall be included in such transcript, and his determination shall be signed by him, and made part of the record; he shall include in such signed paper, such portions of the record and of the proofs as he may deem material for the proper disposition of the questions to be decided by this court, as also such parts as are specially required by these rules. But if any party desires printed any document or part of the record or proofs directed by the trial judge to be omitted, such party may print the same under separate cover and cause it to be certified and transmitted to this court as an addendum to the record. Such printing and certification shall be primarily at the cost of the party who requires it. The cover sheet of such addendum shall contain the title of the cause and shall plainly show that it is an addendum to the transcript and shall show at whose instance it was printed.

4. Whenever it shall be necessary or proper, in the opinion of this court or of the court below, that original papers of any kind should be inspected here, this court or the court below may make such rule or order for the safe-keeping, transporting and return of such original papers as to it may seem proper.

5. All appeals, writs of error, and citations must be made returnable not exceeding forty days from the day of signing the citation, whether the return day fall in vacation or in term time, and be served before the return day.

6. The transcript of the record in cases of admiralty and maritime

jurisdiction shall include the matters which, by admiralty rule 52 of the Supreme Court, are required to be included therein.

7. No transcript of the record and proofs shall (unless it be specifically otherwise ordered by the trial judge) contain a copy of the petition for writ of error or petition for appeal, the order granting writ of error or appeal, the writ of error, the appeal bond, the citation, the return of service or waiver of service of citation. In lieu thereof the originals of said documents shall be certified to this court within forty days of the date of the citation (all to be returned to the court below with the mandate of this court, except the citation and writ of error), and in said transcript there shall be inserted a memorandum stating the date of the petition for writ of error or for appeal, the date of the order granting writ of error or allowing appeal, the date of the writ of error and date when copy thereof or copy of order allowing appeal is lodged in the office of the clerk of the court below for adverse parties, the date, penalty, the names of the obligors, the condition (whether for payment of costs and damages or for costs alone) of the appeal bond, the date of the citation, and the date of the service thereof or of the waiver of service thereof.

No general replication in equity shall be copied into the transcript of the record, but in lieu thereof there shall be inserted a memorandum showing the date of filing of such replication and by whom filed. When a case has by writ of error or appeal been brought to this court the second time, there shall only be copied in the record the proceedings subsequent to the former writ of error or appeal. It shall be the duty of the trial judge in determining what shall constitute said transcript of the record, to direct the omission of all matter which in his judgment is unnecessary to the presentation of the issues to be passed upon by this court and especially to prevent unnecessary duplications in such transcript. And the clerk below shall not certify any transcript of the record and proofs unless it contains either the stipulation of counsel or the determination of the trial judge mentioned in § 3 of this rule.

8. Whenever the printed transcript of the record or any addendum thereto as certified by the clerk of the court below shall contain any corrections or insertions, it shall be the duty of the party filing the printed transcript or addendum in this court to correct all the copies of the same so as to correspond with the certified transcript or addendum.

15. Translations.—Whenever any transcript of the record transmitted to this court shall contain any documents, papers testimony or proceedings in a foreign language, and the transcript does not also contain a translation of the said documents, papers, testimony or proceedings made under the authority of the lower court, or ad-

mitted to be correct, the transcript of the record may be returned by this court to the lower court in order that a translation may there be supplied, printed and certified to this court.

16. Docketing Cases.—1. Except as otherwise provided by rule 23, it shall be the duty of the appellant, plaintiff in error, or petitioner for revision in bankruptcy to cause to be printed and suitably indexed the transcript of the record (as well as any addendum to the record required by such party) and to deliver the same to the clerk or deputy clerk of the court below for certification, sealing and transmission to this court within forty days from the date of the citation or the filing of the petition for revision; and also on or before the expiration of the said forty days to file with the clerk of this court at least twenty-four printed copies of the said transcript and addendum above-mentioned, if any. He shall also at the same time furnish to the adverse party at least three copies of the printed transcript of the record, including any addendum thereto printed at his instance. It shall also be the duty of appellant, plaintiff in error or petitioner for revision to docket the cause in this court on or before the return day, whether in term time or vacation. In case any appellee or defendant in error shall have required an addendum to the transcript of record, it shall be the duty of such party to file in the office of the clerk of this court, on or before the said return day, at least twenty-four printed copies of such addendum as well as one additional copy thereof, which shall have been duly certified by the clerk of the court below; and such party shall at the same time furnish to the adverse party at least three copies of said printed addendum.

The time within which any of the acts in this section above mentioned are required to be done may for good cause shown be enlarged by the justice or judge, who signed the citation or any judge of this court, provided the order of enlargement be made prior to the expiration of such time; such order to be filed with the clerk of this court.

2. If the plaintiff in error or appellant shall fail to comply with this rule, the defendant in error or appellee may have the cause docketed and dismissed upon producing a certificate from the clerk of the court wherein the judgment or decree was rendered, stating the case and certifying that such writ of error or appeal has been duly sued out or allowed. And in no case shall the plaintiff in error or appellant be entitled to docket the case and file the transcript of the record after the same shall have been docketed and dismissed under this rule, unless by order of the court.

3. But the defendant in error or appellee may, at his option, docket the case and file a copy of the record with the clerk of this court; and if the case is docketed and a copy of the record filed with the clerk of this court by the plaintiff in error or appellant within the period of time above limited and prescribed by this rule, or by the

defendant in error or appellee at any time thereafter, the case shall stand for argument at the term.

4. Upon the filing of the transcript of the record in any case brought up by writ of error or appeal, the appearance of counsel for the party docketing the cause shall be entered by the clerk of this court as of course.

5. Defendants in error, appellees or respondents, are required, at the time of entering their appearance by attorney, to make a deposit of $25.00, for account of costs to be incurred by them in this court. This is applicable to all cases except when the United States is defendant in error or appellee.

17. Docket.—1. The clerk shall enter upon a docket all cases brought to and pending in the court in their proper chronological order.

2. All cases in which copies of the printed record are delivered to the adverse party or his counsel at least twenty days before any regular term or adjourned term shall stand for argument at the term holden next after the docketing of the case.

3. The clerk before each regular term shall print a docket containing all pending cases and such docket shall be called at every term or adjourned term. If a case is called for hearing at two terms successively, and upon the call at the second term neither party is prepared to argue it, it will be dismissed at the cost of the plaintiff in error, appellant or petitioner for revision, unless sufficient cause is shown for further postponement.

4. By consent of counsel in writing filed with the clerk of this court, any cases not included in § 2 of this rule may be by the clerk placed at the foot of the argument docket and may be argued at any term or adjourned term, provided the briefs on both sides are filed before the case is called.

18. Certiorari.—No certiorari for diminution of the record will be hereafter awarded in any case, unless a motion therefor shall be made in writing, and the facts on which the same is founded shall, if not admitted by the other party, be verified by affidavit. And all motions for such certiorari must be made at the first term of the entry of the case; otherwise the same will not be granted, unless upon special cause shown to the court accounting satisfactorily for the delay.

19. Death of a Party.—1. Whenever, pending a writ of error or appeal in this court, either party shall die, the proper representatives in the personalty or realty of the deceased party, according to the nature of the case, may voluntarily come in and be admitted parties to the suit, and thereupon the case shall be heard and determined as in other cases; and if such representatives shall not voluntarily become parties, then the other party may suggest the death on the record, and thereupon, on motion, obtain an order that unless such

representatives shall become parties within sixty days, the party moving for such order, if defendant in error, or appellee, shall be entitled to have the writ of error or appeal dismissed, and if the party so moving shall be plaintiff in error, or appellant, he shall be entitled to open the record, and on hearing, have the judgment or decree reversed, if it be erroneous: Provided, however, that a copy of every such order shall be personally served on said representatives at least thirty days before the expiration of such sixty days.

2. When the death of a party is suggested, and the representatives of the deceased do not appear within ten days after the expiration of such sixty days, and no measures are taken by the opposite party within that time to compel their appearance, the case shall abate.

3. When either party to a suit in a District Court of the United States shall desire to prosecute a writ of error or appeal to this court, from any final judgment or decree rendered in the District Court, and at the time of suing out such writ of error or appeal, the other party to the suit shall be dead and have no proper representative within the jurisdiction of the court which rendered such final judgment or decree, so that the suit cannot be revived in that court, but shall have a proper representative in some state or territory of the United States, or in the District of Columbia, the party desiring such writ of error or appeal may procure the same, and may have proceedings on such judgment or decree superseded or stayed in the same manner as is now allowed by law in other cases, and shall thereupon proceed with such writ of error or appeal as in other cases. And within thirty days after the filing of the record in this court the plaintiff in error or appellant shall make a suggestion to the court, supported by affidavit, that the said party was dead when the writ of error or appeal was taken or sued out, and had no proper representative within the jurisdiction of the court which rendered such judgment or decree, so that the suit could not be revived in that court, and that said party had a proper representative in some state or territory of the United States, or in the District of Columbia, and stating therein the name and character of such representative, and the state or territory or district in which such representative resides; and upon such suggestion he may, on motion, obtain an order that, unless such representative shall make himself a party within ninety days, the plaintiff in error or appellant shall be entitled to open the record, and, on hearing, have the judgment or decree reversed, if the same be erroneous; Provided, however, that a proper citation, reciting the substance of such order, shall be served upon such representative, either personally or by being left at his residence, at least thirty days before the expiration of such ninety days; provided, also, that in every such case, if the representative of the deceased party does not appear within ten days after the expiration of such ninety days, and the measures above provided to compel the appearance of such rep-

resentative have not been taken within the time as above required, by the opposite party, the case shall abate: And provided, also, that the said representative may, at any time before or after said suggestion, come in and be made a party to the suit, and thereupon the case shall proceed, and be heard and determined as in other cases.

20. Dismissing Cases.—Whenever the plaintiff and defendant in a writ of error pending in this court, or the appellant and appellee in an appeal, shall, by their attorneys of record, sign and file with the clerk an agreement in writing directing the case to be dismissed, and specifying the terms on which it is to be dismissed, as to costs, and shall pay to the clerk any fees that may be due to him, it shall be the duty of the clerk to enter the case dismissed, and to give to either party requesting it a copy of the agreement filed; but no mandate or other process shall issue without an order of the court. No attorney's docket fee shall be taxed in a case dismissed under this rule.

21. Motions.—1. All motions to the court shall be reduced to writing, and shall contain a brief statement of the facts and objects of the motion.

2. One hour on each side shall be allowed to the argument of a motion, and no more, without special leave of the court, granted before the argument begins.

3. No motion to dismiss, except on special assignment by the court, shall be heard, unless previous notice has been given to the adverse party, or the counsel or attorney of such party.

22. Parties Not Ready.—1. When a case is called for hearing, and no counsel appears and no brief has been filed for the plaintiff in error or appellant, the defendant in error or appellee may have the adverse party called and the writ of error or appeal dismissed.

2. Where the defendant in error or appellee fails to appear when the case is called for hearing, the court may proceed to hear argument on the part of the plaintiff in error or appellant, and to give judgment according to the right of the case.

3. When a case is reached in the regular call of the docket and no counsel appears for either party and no submission of the case is asked, the case may be dismissed at the cost of the plaintiff in error or appellant.

23. Printing Records by Consent.—This rule shall apply only to cases in which counsel for all parties to any cause pending in this court, or about to be brought into this court, shall by stipulation, in writing, filed with the clerk of the court below, agree to be governed by the terms hereof.

1. The transcript may be made and the record printed as has been heretofore the practice of this court, and the same shall, subject to the provisions of sections 3, 6 and 7 of rule 14, be made up by the

clerk of the court below and transmitted to this court under his hand and seal as heretofore.

2. All records in such cases shall be printed under the supervision of the clerk of this court by such printer and at such rate as this court may designate. In such cases, upon the payment of the estimated cost of printing, together with the supervising and other fees established by law (which amount shall be deposited with the clerk within ten days after notice thereof), the clerk shall cause to be printed thirty-five copies of the record, twenty-five copies of which shall be filed for the use of the court, three copies furnished to the adverse party, and the remaining copies to be delivered to the appellant, plaintiff in error or petitioner.

3. The parties may stipulate in writing that parts only of the transcript of the record shall be printed, and the case may be heard on the parts so printed, but the court may direct the printing of other parts of the record.

4. If the record shall not have been printed when the case is reached on the regular call of the docket, the case may be dismissed.

5. In case of reversal, affirmance, or dismissal, with costs, the amount paid for the printing of the record and the clerk's fees for supervising the same shall be taxed against the party against whom costs are given.

6. In cases brought here under this rule it shall be the duty of the plaintiff in error or appellant to docket the case and file the record thereof with the clerk of this court by or before the return day, whether in vacation or in term time. But for good cause shown the justice or judge who signed the citation, or any judge of this court, may enlarge the time by or before its expiration, the order of enlargement to be filed with the clerk of this court. If the plaintiff in error or appellant shall fail to comply with this rule, the defendant in error or appellee may have the cause docketed and dismissed upon producing a certificate, from the clerk of the court wherein the judgment or decree was rendered, stating the case and certifying that such writ of error or appeal has been duly sued out or allowed. And in no case shall the plaintiff in error or appellant be entitled to docket the case and file the record after the same shall have been docketed and dismissed under this rule, unless by order of the court.

7. But the defendant in error or appellee may, at his option, docket the case and file a copy of the record with the clerk of this court; and if the case is docketed and a copy of the record filed with the clerk of this court by the plaintiff in error or appellant within the period of time above limited and prescribed by this rule, or by the defendant in error or appellee at any time thereafter, the case shall stand for argument at the term.

8. Upon the filing of the transcript of a record brought up by writ of error or appeal, the appearance of the counsel for the party docketing the case shall be entered as of course.

24. Briefs.—1. The counsel for plaintiff in error or appellant shall file with the clerk of this court, at least fifteen days before every term or adjourned term, twenty copies of a printed brief, one of which shall forthwith be furnished by the clerk to each of the counsel of record engaged upon the opposite side.

2. This brief shall contain, in order here stated—

(a) A concise abstract, or statement of the case, presenting succinctly the questions involved, in the manner in which they are raised.

(b) A brief of the argument, exhibiting a clear statement of the points of law or facts to be discussed, with a reference to the pages of the record and the authorities relied upon in support of each point. When a statute of a state is cited, so much thereof as may be deemed necessary to the decision of the case shall be printed at length.

3. The counsel for defendant in error or appellee shall file with the clerk of this court, at least five days before every term or adjourned term, twenty copies of a printed brief, one of which shall forthwith be furnished by the clerk to each of the counsel of record engaged upon the opposite side. His brief shall be of a like character with that required of the plaintiff in error or appellant, except no statement of the case shall be required, unless that presented by the plaintiff in error or appellant is controverted.

4. When, according to this rule, a plaintiff in error or appellant is in default, the case may be dismissed on motion; and when a defendant in error or an appellee is in default, he will not be heard, except on consent of his adversary, or by request of the court.

5. When no counsel appears for one of the parties, and no printed brief or argument is filed, only one counsel will be heard for the adverse party; but if a printed brief or argument is filed, the adverse party will be entitled to be heard by two counsel.

6. Counsel for either party may file with the clerk of this court twenty printed copies of a reply brief, provided the same are filed at least three days before the case is reached in its regular order on the argument docket.

25. Oral Arguments.—1. The plaintiff in error or appellant in this court shall be entitled to open and conclude the argument of the case. But when there are cross appeals they shall be argued together as one case, and the plaintiff in the court below shall be entitled to open and conclude the argument. Where there are cross writs of error the court may direct that they be argued together. In such event the plaintiff in the court below shall be entitled to open and conclude the argument.

2. Only two counsel will be heard for each party on the argument of a case.

3. Two hours on each side will be allowed for the argument, and

no more, without special leave of the court, granted before the argument begins. The time thus allowed may be apportioned between the counsel on the same side at their discretion; provided, always, that a fair opening of the case shall be made by the party having the opening and closing arguments.

26. Forms of Printed Records, Arguments and Briefs.—All transcripts of record, addenda thereto, arguments and briefs printed for the use of this court shall be in small pica type, 24 pica "ems" to a line, on unglazed paper, with an index and a suitable cover containing the title of the court, the cause, and the court from which the case is brought into this court, and the number of the case. Size of pages to be 9¼x6¼ inches, except that in patent cases the size of the pages shall be 10¾x7⅝ inches; that it to say, large enough to bind in copies of Patent Office drawings and specifications without folding. So much of the record as was printed in the court below may be used in this court if it conform to this rule.

27. Copies of Records and Briefs.—The clerk shall cause to be bound two copies of the printed record in every case, and of all printed motions, briefs and arguments filed therein; one copy to be carefully preserved in his office, and one copy for the use of the court library. The cost of the same to be paid for by the clerk out of the revenues of his office.

28. Opinions of the Court.—1. All opinions delivered by the court shall be printed under the supervision of the judge delivering the same, or of one of the Circuit Judges, the cost of such printing to be paid by the clerk out of the revenues of his office and charged to the litigants in the respective cases, to be taxed and allowed as other costs.

2. The original opinions of the court shall be filed with the clerk of this court for preservation.

3. The clerk of this court shall from time to time cause two sets of the printed opinions of this court to be bound in a substantial manner into volumes, one set to be kept in the clerk's office and one set to be kept in the court library.

29. Rehearing.—A petition for rehearing can be presented only within thirty days after judgment is entered, unless by special leave granted before the expiration of said thirty days; and must be printed, and briefly and distinctly state its grounds, and be supported by a certificate of counsel; and will not be granted, or permitted to be argued, unless a judge who concurred in the judgment desires it, and a majority of the court so determine. But such petition shall not operate to stay the mandate or other process provided for in rule 32, except by special order of the court.

30. Interest.—1. In cases where a writ of error is prosecuted in this

court, and the judgment of the inferior court is affirmed, the interest shall be calculated and levied, from the date of the judgment below until the same is paid, at the same rate that similar judgments bear interest in the courts of the State where such judgment was rendered.

2. In all cases where a writ of error shall delay the proceedings on the judgment of the inferior court, and shall appear to have been sued out merely for delay, damages at a rate not exceeding ten per cent., in addition to interest, shall be awarded upon the amount of the judgment.

3. The same rule shall be applied to decrees for the payment of money in cases in equity, unless otherwise ordered by this court.

4. In cases in admiralty, damages and interest may be allowed, if specially directed by the court.

Costs.—1. In all cases where any suit shall be dismissed in this court, except when the dismissal shall be for want of jurisdiction, costs, shall be allowed to the defendant in error or appellee, unless otherwise agreed by the parties.

2. In all cases of affirmance of any judgment or decree in this court, costs shall be allowed to the defendant in error or appellee, unless otherwise ordered by the court.

3. In cases of reversal of any judgment or decree in this court, costs shall be allowed to the plaintiff in error or appellant, unless otherwise ordered by the court. The cost of the transcript of the record and proofs from the court below, and the expense of printing the same, when printed below, shall be taxable in that court as costs in the case. The expense of printing, however, shall be taxed at actual cost (to be shown by the affidavit of the printer), but in no event to exceed twenty cents per folio of one hundred words.

31. 4. Neither of the foregoing sections shall apply to cases where the United States is a party; but in such cases no costs shall be allowed in this court for or against the United States.

5. When costs are allowed in this court, it shall be the duty of the clerk to insert the amount thereof in the body of the mandate, or other proper process, sent to the court below, and annex to the same the bill of items taxed.

6. In all cases certified to the Supreme Court, or removed thereto by certiorari or otherwise, the fees of the clerks of this court shall be paid before a transcript of the record shall be transmitted to the Supreme Court.

7. The following table of fees and costs, established under the act of Congress of February 19, 1897 (29 Stat. 536, c. 263), shall remain and continue in effect with the promulgation of these rules:

Docketing a case and filing the record	$ 5 00
Entering an appearance	25
Transferring a case to the printed calendar	1 00
Entering a continuance	25

Filing a motion, order or other paper	25
Entering any rule, or making or copying any record other paper, for each one hundred words	20
Entering a judgment or decree	1 00
Every search of the records of the court and certifying the same	1 00
Affixing a certificate and a seal to any paper	1 00
Receiving, keeping and paying money, in pursuance of any statute or order of the court, one per cent. on the amount so received, kept and paid.	
Preparing the record for the printer, indexing same, supervising the printing and distributing the copies, for each printed page of the record and index	25
Making a manuscript copy of the record, when required by the rules, for each one hundred words (but nothing in addition for supervising the printing)	20
Issuing a writ of error and accompanying papers, or a mandate or other process	5 00
Filing briefs, for each party appearing	5 00
Copy of an opinion of the court, certified under seal, for each printed page (but not to exceed five dollars in the whole for any copy)	1 00
Attorney's docket fee	20 00

32. Mandate.—In all cases finally determined in this court, a mandate or other proper process, in the nature of a procedendo, shall be issued to the court below, for the purpose of informing such court of the proceedings in this court, so that further proceedings may be had in such court as to law and justice may appertain. Such mandate, or other process, may issue at any time on the order of the court; but, unless otherwise ordered, it shall issue as of course after the expiration of thirty days from the date of the judgment on decree.

33. Custody of Prisoners on Habeas Corpus.—1. Pending an appeal from the final decision of any court or judge declining to grant the writ of habeas corpus, the custody of the prisoner shall not be disturbed.

2. Pending an appeal from the final decision of any court or judge discharging the writ after it has been issued, the prisoner shall be remanded to the custody from which he was taken by the writ, or shall, for good cause shown, be detained in custody of the court or judge, or be enlarged upon recognizance, as hereinafter provided.

3. Pending an appeal from the final decision of any court or judge discharging the prisoner, he shall be enlarged upon recognizance, with surety, for appearance to answer the judgment of the appellate court, except where, for special reasons, sureties ought not to be required.

34. Models, Diagrams, and Exhibits of Material.—1. Models, diagrams, and exhibits of material forming part of the evidence taken in the court below, in any case pending in this court, on writ of error or appeal, shall be placed in the custody of the clerk of this court at least ten days before the case is heard or submitted.

2. All models, diagrams, and exhibits of material placed in the custody of the clerk for the inspection of the court on the hearing of a case, must be taken away by the parties within one month after the case is decided. When this is not done, it shall be the duty of the clerk to notify the counsel in the case, by mail or otherwise, of the requirements of this rule; and, if the articles are not removed within a reasonable time after the notice is given, he shall destroy them, or make such other disposition of them as to him may seem best.

35. Saturdays Conference Days.—The clerk in making his docket shall not set down for argument any cause for any Saturday of the term for which such docket is intended, and this court will meet on said days for consultation only.

36. Bankruptcy.—1. Upon the filing of the petition for review as provided for in § 24 (b) of the act to establish a uniform system of bankruptcy throughout the United States, approved July 1, 1898, the clerk of this court shall docket the cause, and shall forthwith serve a certified copy of the petition upon the respondent or respondents, or his or their solicitor, through the mail or otherwise, together with a notice to the respondent or respondents, to answer, demur, or move to dismiss the said petition, within fifteen days from the date of such notice.

Petitions to review orders in bankruptcy filed under the provisions of § 24-b of the Bankruptcy Act must be filed within ten days after the entry of the order sought to be reviewed, but any Judge of this Court may, for good cause shown, enlarge the time for filing the petition, provided, the order of enlargement is made before the expiration of the time hereby limited for filing the petiton. Said order to be filed with the Clerk of this Court.

2. The petitioner shall cause a certified printed transcript of the record and proceedings of the bankruptcy court of the matter to be reviewed, to be filed in the clerk's office of this court within forty days from the date of the filing of his petition for review.

3. By consent of all parties to the cause, by stipulation in writing filed with the clerk of this court, the petitioner may cause a transcript of the record and proceedings of the bankruptcy court of the matter to be reviewed to be filed in the clerk's office of this court in lieu of a certified printed transcript as above mentioned, and thereupon the clerk of this court shall cause the record to be printed as provided in the 23rd rule of this court, and furnish counsel on both sides with three copies each.

4. And such causes shall stand for hearing in their regular order. But either side may, upon ten days' notice given to the opposing counsel, have the cause heard, either at term time, or in vacation, or in chambers, upon the briefs, unless at its own suggestion, or for good cause shown, the court shall order oral argument.

5. That all causes coming up by appeal as provided in § 25 of said bankruptcy act shall stand for hearing in this court, either in term time or in vacation, and may be called up by either party upon ten days' notice, as provided in § 4 of this rule.

6. All rules of this court (except as herein modified) shall apply to the proceedings in bankruptcy to which this rule relates.

7. Nothing herein shall prevent the court, from time to time, from making, for special cause, orders diminishing or enlarging the times named herein, or any other order suitable to expedite the proceeding or to prevent injustice.

37. The foregoing rules shall be in force on and after April 1st, 1912.

38. On and after February 1, 1913, the contents of transcripts of record on appeal in equity and admiralty causes and on appeal (as distinguished from petitions for revision) in bankruptcy causes, shall be governed by Rules 75, 76 and 77 of the Rules of Practice for the Courts of Equity of the United States, promulgated by the Supreme Court of the United States November 4, 1912, which rules are as follows:

"75. Record on Appeal—Reducton and Preparation.—In case of appeal:

(a) It shall be the duty of the appellant or his solicitor to file with the clerk of the court from which the appeal is prosecuted, together with proof of acknowledgment of service of a copy on the appellee or his solicitor, a præcipe which shall indicate the portions of the record to be incorporated into the transcript on such appeal. Should the appellee or his solicitor desire additional portions of the record incorporated into the transcript, he shall file with the clerk of the court his præcipe also within ten days thereafter, unless the time shall be enlarged by the court or a judge thereof, indicating such additional portions of the record desired by him.

(b) The evidence to be included in the record shall not be set forth in full, but shall be stated in simple and condensed form, all parts not essential to the decision of the questions presented by the appeal being omitted and the testimony of witnesses being stated only in narrative form, save that if either party desires it, and the court or judge so directs, any part of the testimony shall be reproduced in the exact words of the witness. The duty of so condensing and stating the evidence shall rest primarily on the appellant, who shall prepare his statement thereof and lodge the same in the clerk's office for the examination of the other parties at or before the time of filing his præcipe under paragraph a of this rule. He shall also notify the other parties or their solicitors of such lodgment and shall name a time and place when he will ask the court or judge to approve the statement, the time so named to be at least ten days after

such notice. At the expiration of the time named or such further time as the court or judge may allow, the statement, together with any objections made or amendments proposed by any party, shall be approved by the court or judge, and if it be not true, complete or properly prepared, it shall be approved by the court or judge, and if it be not true, complete or properly prepared it shall be made so under the direction of the court or judge and shall then be approved. When approved, it shall be filed in the clerk's office and become a part of the record for the purposes of the appeal.

(c) If any difference arise between the parties concerning directions as to the general contents of the record to be prepared on the appeal, such difference shall be submitted to the court or judge in conformity with the provisions of paragraph b of this rule and shall be covered by the directions which the court or judge may give on the subject.

76. Record on Appeal—Reduction and Preparation—Costs—Correction of Omissions.—In preparing the transcript on an appeal, especial care shall be taken to avoid the inclusion of more than one copy of the same paper and to exclude the formal and immaterial parts of all exhibits, documents and other papers included therein; and for any infraction of this or any kindred rule the appellate court may withhold or impose costs as the circumstances of the case and the discouragement of like infractions in the future may require. Costs for such an infraction may be imposed upon offenting solicitors as well as parties.

If, in the transcript, anything material to either party be omitted by accident or error, the appellate court, on a proper suggestion or its own motion, may direct that the omission be corrected by a supplemental transcript.

77. Record on Appeal—Agreed Statement.—When the questions presented by an appeal can be determined by the appellate court without an examination of all the pleadings and evidence, the parties, with the approval of the District Court or the judge thereof, may prepare and sign a statement of the case showing how the questions arose and were decided in the district court and setting forth so much only of the facts alleged and proved, or sought to be proved, as is essential to a decision of such questions by the appellate court. Such statement, when filed in the office of the clerk of the District Court, shall be treated as superseding, for the purposes of the appeal, all parts of the record other than the decree from which the appeal is taken, and together with such decree, shall be copied and certified to the appellate court as the record on appeal."

Promulgated November 21st, 1912.